THIRD DIVISION
August 7, 2019

No. 1-16-3138

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 15 CR 14306
	)	
PAUL DUDASIK,	)	Honorable
	)	Charles P. Burns,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Howse concurred in the judgment.

ORDER

¶ 1 *Held*: Dismissed in part and affirmed. Admonishments substantially complied with Rule 401(a). Appellate court lacks jurisdiction to hear constitutional challenges to SORA on direct appeal from criminal conviction.

¶ 2 Following a bench trial, *pro se* defendant Paul Dudasik was convicted and sentenced to 8 years in prison for predatory criminal sexual assault of a child under 13 years of age. 720 ILCS 5/11-1.40(a)(1) (West 2018). The evidence showed, in sum, that defendant, age 60, sexually assaulted a 7-year-old girl by touching her vagina and making her hold his penis. But defendant does not challenge the sufficiency of the evidence or raise any trial errors that require a detailed look at the State's proof of the charged offense. So we proceed directly to the two issues at hand: The adequacy of the trial court's Rule 401(a) admonishments, and thus the validity of

defendant's waiver of counsel; and defendant's constitutional challenges to certain provisions the Sex Offender Registration Act (SORA). See 730 ILCS 150/1 *et seq.* (West 2018).

¶ 3 Defendant first argues that the trial court's Rule 401(a) admonishments were faulty, and thus that his waiver of counsel was invalid. In particular, the trial court misadvised defendant that the sentencing range for his offense was 6 to 30 years, when in fact it was 6 to 60 years. See 720 ILCS 5/11-1.40(a)(1), (b)(1) (West 2018).

¶ 4 Illinois Supreme Court Rule 401(a) requires the trial court to admonish a defendant about various matters, including the minimum and maximum possible sentences, before accepting the defendant's waiver of counsel. Ill. S. Ct. R. 401(a) (eff. July 1, 1984). Our supreme court has repeatedly held that "substantial compliance" with Rule 401(a) may be sufficient for a valid waiver; "strict technical compliance" with the rule is not required. *People v. Wright*, 2017 IL 119561, ¶ 41. More precisely, if the admonishments substantially (albeit imperfectly) complied with Rule 401(a), then the waiver will be valid, provided that (1) it was otherwise knowing and intelligent, and (2) the defendant suffered no prejudice as a result of the imperfect, but substantially compliant, admonishments. *Id.*

¶ 5 Whether the trial court substantially complied with Rule 401(a) is a question of law we review *de novo*. *People v. Washington*, 2016 IL App (1st) 131198, ¶ 50. We review the trial court's ultimate decision to accept or reject a waiver of counsel for an abuse of discretion. *Id.* And when, as here, the error was not raised in a post-trial motion, we review for second-prong plain error. *Id.* ¶ 45.

¶ 6 The supreme court's decision in *Wright*, 2017 IL 119561, is controlling. In that case, as in this one, the trial court properly admonished the defendant in all respects but one, namely, as to the maximum possible sentence he faced (which was 75 years, not 60 years, as the trial court

told him). *Id.* ¶ 52. The supreme court found that the admonishments substantially complied with Rule 401(a), this error notwithstanding. *Id.* ¶ 54.

¶ 7 Having found substantial compliance in those circumstances, the supreme court went on to find that the defendant's waiver of counsel was otherwise knowing and intelligent, and that the defendant was not prejudiced by the "understatement of the potential maximum sentence." *Id.* ¶¶ 55-56. There was no prejudice, the supreme court held, because the defendant was sentenced to 50 years, which was *below* the understated maximum conveyed in the admonishments. *Id.* ¶ 56. And the defendant never alleged that he would not have represented himself, if only he had been properly admonished as to the maximum possible sentence. *Id.*

¶ 8 Here, as in *Wright*, the only error defendant alleges in the Rule 401(a) admonishments is the understated maximum sentence. And *Wright* holds that an error of this kind, on its own, does not render the admonishments less than substantially compliant. Defendant does not argue that his waiver of counsel was *otherwise* unknowing or unintelligent; the understated maximum is the only basis for reversal he offers. And he was not prejudiced by the imperfect admonishments: His 8-year sentence was *far* below the understated maximum of 30 years, and quite close, in fact, to the (correctly stated) minimum of 6 years.

¶ 9 We are not convinced by defendant's suggestion, in so many words, that he would not have waived counsel, if only he had known that the maximum was 60 rather than 30 years. As evidence for this claim, defendant points to a statement he made at sentencing. Quoted in full, that statement reads as follows:

> "I want to say I am not guilty. I am very sorry for putting the rug through this, putting though this because I went pro se. I was stupid for doing that and I should have listened to you, your Honor. It's my mistake. I am willing to take whatever punishment you are

going to give me and I will be filing an appeal."

Defendant says he made this statement "just after hearing" the correct sentencing range—more accurately, it was made shortly after a long recess, before which the State had announced the correct sentencing range during its argument in aggravation—and that the regret he expressed for having waived counsel thus reflected his revised understanding of the sentencing range.

¶ 10 But defendant's own words show that he did not come to regret his decision to waive counsel only because he now knew the correct sentencing range. Defendant came to regret that decision because he lost his case, even though—as he continued to assert—he was innocent.

¶ 11 And for all practical purposes, the error in the admonishments did not substantially skew defendant's perception of the stakes. Given defendant's age at the time of sentencing—he was 61 years old—a sentence at or near the understated maximum (of 30 years, at 85% time) still would have been a *de facto* life sentence for him. So we doubt that the error substantially affected his decision. For this reason, too, defendant cannot show that he was prejudiced by the imperfect admonishments.

¶ 12 In sum, we find that the trial court's admonishments substantially complied with Rule 401(a), and thus that defendant's waiver of counsel was valid. Having found no error, we need not consider defendant's plain-error arguments.

¶ 13 Next, defendant challenges his obligation to register as a sex offender and contends that SORA violates his rights to substantive and procedural due process. We lack jurisdiction to consider these arguments on direct appeal from his criminal conviction, because the obligation to register and other restrictions imposed by SORA are collateral consequences of that conviction, and thus not a part of the judgment under review. *People v. Bingham*, 2018 IL 122008, ¶¶ 16-21. Pursuant to *Bingham*, this portion of defendant's appeal must be dismissed. *Id.* ¶¶ 25-26.

¶ 14 It is true that in *Bingham* (*id.* ¶¶ 1, 10), the defendant's registration requirement was triggered by a combination of his current conviction for felony theft and his prior conviction (before SORA was enacted) for attempted criminal sexual assault. 730 ILCS 150/3(c)(2.1) (West 2012) (previously convicted sex offender, not previously required to register, must register if convicted after certain date of "any felony offense"). Here, in contrast, defendant's current conviction alone, for predatory criminal sexual assault, triggered his requirement to register as a sexual predator.

¶ 15 But that distinction, drawn by defendant in his reply brief, makes no difference. The holding of *Bingham* is simply that a defendant cannot challenge a collateral consequence on direct appeal from the criminal conviction that triggered the collateral consequence. Instead, the defendant must appeal from a conviction for violating the requirement imposed on him, or else file a civil suit seeking a declaration of unconstitutionality. *Bingham*, 2018 IL 122008, ¶ 21. Nothing in *Bingham* limits that holding to situations where the present offense triggered the collateral consequence only because of the defendant's criminal history. And we see no justification for placing such a caveat on that holding.

¶ 16 The distinction defendant draws does not, as he claims, allow us to "presume" or "infer" that his registration requirement was "part of the judgment being appealed in this case." The obligation to register as a sex offender "is not embodied in the trial court's judgment because SORA, not the trial court, imposes the obligation." *People v. McArthur*, 2019 IL App (1st) 150626-B, ¶ 45; see *Bingham*, 2018 IL 122008, ¶ 17. So while the requirement followed directly from defendant's present conviction, irrespective of any criminal history (of which, to be fair, he had none), that does not make it any less of a collateral consequence.

¶ 17 If we accepted defendant's view, then all manner of collateral consequences would no

longer be collateral. The loss of the right to vote, or ineligibility to carry firearms, to take but two examples, often follow directly from a single conviction, and yet we do not permit defendants to challenge these consequences on direct appeal from the convictions that triggered them. See *Bingham*, 2018 IL 122008, ¶ 19.

¶ 18 We have thus held that *Bingham* applies when, as here, the registration or other SORA requirements arose solely as collateral consequences of the convictions from which the defendant was currently appealing, irrespective of the defendant's criminal history. *People v. Christian*, 2019 IL App (1st) 153155, ¶¶ 1, 17 (aggravated criminal sexual abuse); *McArthur*, 2019 IL App (1st) 150626-B, ¶¶ 1, 45 (same); *People v. Denis*, 2018 IL App (1st) 151892, ¶ 97 (criminal sexual assault and aggravated criminal sexual abuse). We fully agree with those cases and adhere to them here.

¶ 19 For these reasons, we dismiss defendant's appeal insofar as it challenges his registration and other SORA requirements as unconstitutional and otherwise affirm the judgment of the circuit court.

¶ 20 Appeal dismissed in part; affirmed.